

Exhibit 22

Deposition of Paul Oyer
(November 29, 2017)
(excerpted)

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CUNG LE; NATHAN QUARRY, JON)	
FITCH, on behalf of)	
themselves and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	Case No.
)	2:15-cv-01045-RFB-(PAL)
)	
ZUFFA, LLC, d/b/a Ultimate)	
Fighting Championship and)	
UFC,)	
)	
Defendant.)	
_____)	

HIGHLY CONFIDENTIAL

VIDEOTAPED DEPOSITION OF PAUL OYER

Washington, D.C.

November 29, 2017

8:36 a.m.

REPORTED BY:
Tina Alfaro, RPR, CRR, RMR
Job No: 52564

PAUL OYER. - HIGHLY CONFIDENTIAL

<p style="text-align: right;">14</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 of microeconomic analysis?</p> <p>3 A. It's a well-respected intermediate micro</p> <p>4 textbook.</p> <p>5 Q. Anything in particular about the textbook</p> <p>6 that you feel is unreliable in any way?</p> <p>7 A. I just haven't read -- read it in its</p> <p>8 entirety. So I certainly have no -- I can't vouch</p> <p>9 for every sentence in this book.</p> <p>10 Q. Okay. But it's a standard textbook?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. All right. Let me introduce another</p> <p>13 exhibit. This will be Exhibit No. 2.</p> <p>14 (Oyer Exhibit 2 was marked as</p> <p>15 requested.)</p> <p>16 BY MR. DAVIS:</p> <p>17 Q. Are you familiar with this document?</p> <p>18 A. Intimately.</p> <p>19 Q. Is this the report you prepared in this</p> <p>20 case?</p> <p>21 A. Based on the cover, I would say yes. I'm</p> <p>22 going to assume the rest of it is the rest of what I</p> <p>23 gave you.</p> <p>24 Q. If at some point you come to the conclusion</p> <p>25 this is not your report, please let me know</p>	<p style="text-align: right;">16</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 notion that the firm in a competitive market is</p> <p>3 willing to pay that amount?</p> <p>4 A. Exactly.</p> <p>5 Q. Perfect. Okay.</p> <p>6 I want -- a little clarification is</p> <p>7 necessary here because it seems that the way you're</p> <p>8 using marginal product of labor is the same as some</p> <p>9 economists use the term the marginal revenue product</p> <p>10 of labor.</p> <p>11 A. Uh-huh.</p> <p>12 Q. Is it fair to say that you are equating the</p> <p>13 two in this context?</p> <p>14 A. I'd have to see the context in which others</p> <p>15 use it, but I would use them -- I don't happen to</p> <p>16 use the term marginal revenue product of labor, but</p> <p>17 I would -- as far as I can think, those would be</p> <p>18 equivalent.</p> <p>19 Q. Okay. Let me just put a slightly finer</p> <p>20 point on it. Again, this is just so that when we're</p> <p>21 talking to each other we're talking about the same</p> <p>22 thing. If we could stipulate that sometimes</p> <p>23 economists would say that the marginal product of</p> <p>24 labor is an output measure, and then when that is</p> <p>25 multiplied by the marginal revenue of output you</p>
<p style="text-align: right;">15</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 immediately.</p> <p>3 A. I'm going to trust you on that one.</p> <p>4 Q. And could you turn to page 18, please. Is</p> <p>5 that your signature?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. I just want to walk through now some</p> <p>8 basic definitions so that we are talking about the</p> <p>9 same thing when we're talking to each other today.</p> <p>10 With that in mind, let's begin with the definition</p> <p>11 of the marginal product of labor as you use that</p> <p>12 term.</p> <p>13 So if you turn to page 5, paragraph 15, the</p> <p>14 last line, you seem to indicate that the marginal</p> <p>15 product of the worker's labor is "The amount the</p> <p>16 firm is willing to pay the worker" -- scratch that.</p> <p>17 You say that the firm is willing to pay the worker</p> <p>18 the additional value that the employee creates?</p> <p>19 A. Right.</p> <p>20 Q. Is that a reasonable definition of marginal</p> <p>21 product of labor?</p> <p>22 A. So I would say the marginal product of</p> <p>23 labor is the value -- the additional value that the</p> <p>24 employee creates.</p> <p>25 Q. Great. Great. And then it's a separate</p>	<p style="text-align: right;">17</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 have the marginal revenue product of labor. Does</p> <p>3 that make sense what I just said to you?</p> <p>4 A. I didn't actually follow that. I'm sorry.</p> <p>5 Q. That's quite all right.</p> <p>6 Sometimes the marginal product of labor is</p> <p>7 used as an output measure, not a revenue measure,</p> <p>8 and so then the distinction -- there is a</p> <p>9 distinction, and it seems to me in reading your</p> <p>10 report that you were treating the marginal product</p> <p>11 of labor as equal to the marginal revenue product of</p> <p>12 labor and not an output measure?</p> <p>13 A. Right. So I would think of the marginal</p> <p>14 product of labor as being all the additional</p> <p>15 revenues created by the employee minus all the costs</p> <p>16 having that employee incurs other than the</p> <p>17 compensation you pay. So that might be a</p> <p>18 distinction. I'd have to go back to my old</p> <p>19 definitions of marginal revenue product of labor.</p> <p>20 So, for example, if bringing on a -- if I hire you</p> <p>21 and I have to pay -- I have to also get a computer</p> <p>22 for you to be able to work --</p> <p>23 Q. Right.</p> <p>24 A. -- I would imagine that the marginal</p> <p>25 revenue product of labor would not net out that</p>

5 (Pages 14 to 17)

PAUL OYER. - HIGHLY CONFIDENTIAL

<p style="text-align: right;">18</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 computer, whereas my definition of marginal product</p> <p>3 of labor would be all the additional revenue and</p> <p>4 costs created by having you work for me.</p> <p>5 Q. I think we're speaking about the -- I think</p> <p>6 we're speaking about the same thing. I think the</p> <p>7 distinction that is sometimes drawn is that the</p> <p>8 marginal product of labor is sometimes used in terms</p> <p>9 of output units other than revenue?</p> <p>10 A. Uh-huh.</p> <p>11 Q. It could be sneakers, for example, and then</p> <p>12 the term marginal revenue product is used to convert</p> <p>13 that into dollars, and I just want to be clear that,</p> <p>14 if I understand you correctly, when you say marginal</p> <p>15 product of labor you're talking in terms of revenue,</p> <p>16 dollars?</p> <p>17 A. That's right. I'm talk- -- I'm talking in</p> <p>18 terms of net costs and benefits, including the</p> <p>19 revenue brought in minus the additional costs other</p> <p>20 than compensation related to having the employee</p> <p>21 work there.</p> <p>22 Q. Measured as dollars?</p> <p>23 A. All measured in dollars.</p> <p>24 Q. Okay. Good. Then we'll use marginal</p> <p>25 product of labor --</p>	<p style="text-align: right;">20</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 MR. WIDNELL: I apologize. I just wanted</p> <p>3 to object. I think you slightly misstated what's in</p> <p>4 the report. I just wanted to get that objection to</p> <p>5 your last question.</p> <p>6 MR. DAVIS: Okay.</p> <p>7 BY MR. DAVIS:</p> <p>8 Q. Let's confirm the definition of a</p> <p>9 competitive market for labor. If we look at</p> <p>10 para- -- at page 5, paragraph 18, the second</p> <p>11 sentence, you speak about monopsonistic labor</p> <p>12 markets as one in which a firm has power over --</p> <p>13 market power over its workers. Would it be fair to</p> <p>14 say that a competitive labor market is one in which</p> <p>15 a firm has no market power over its workers?</p> <p>16 A. Yes.</p> <p>17 Q. And that a monopsonistic labor market is</p> <p>18 one in which a firm has monopsony power, is one in</p> <p>19 which the firm has power -- market power over its</p> <p>20 workers?</p> <p>21 A. Yes.</p> <p>22 Q. All right. If we could turn to page 4,</p> <p>23 paragraph 8. You describe labor share as the</p> <p>24 percentage of a firm's total revenues paid out as</p> <p>25 workers' compensation; is that correct?</p>
<p style="text-align: right;">19</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 A. Sounds good.</p> <p>3 Q. -- in that way.</p> <p>4 Even if you agree with me, which I very</p> <p>5 much enjoy, just if you could wait until the end of</p> <p>6 what I've said to say that so the court reporter can</p> <p>7 keep a tidy record. Thank you.</p> <p>8 A. Fair enough.</p> <p>9 Q. Okay.</p> <p>10 While we're here we had -- I had said in</p> <p>11 that same sentence, according to your report, a firm</p> <p>12 is willing to pay a worker the additional value that</p> <p>13 the employer creates in a competitive market; is</p> <p>14 that correct?</p> <p>15 A. I believe you said "employer" when you</p> <p>16 meant to say "employee."</p> <p>17 Q. Let me say it again so we have it right.</p> <p>18 A. Got it.</p> <p>19 Q. You say -- and I'll just read it -- "The</p> <p>20 firm is willing to pay the worker the additional</p> <p>21 value that the employee creates in a competitive</p> <p>22 market"; is that correct?</p> <p>23 A. That's right.</p> <p>24 Q. Great. All right. Now let's define a</p> <p>25 competitive market for labor, if we could.</p>	<p style="text-align: right;">21</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 A. I do.</p> <p>3 Q. Would you be comfortable using either the</p> <p>4 label "labor share" or "wage share" to capture that</p> <p>5 notion?</p> <p>6 A. Okay.</p> <p>7 Q. Okay. So when I say or you say "labor</p> <p>8 share/wage share," for the rest of the deposition,</p> <p>9 that's what we mean. Okay?</p> <p>10 A. Okay.</p> <p>11 Q. Great.</p> <p>12 And in paragraph 12 I believe you have a</p> <p>13 criticism of Dr. Singer that he uses labor share or</p> <p>14 wage share as a benchmark for competitive markets;</p> <p>15 is that right?</p> <p>16 A. Labor share -- well, nothing in</p> <p>17 paragraph 12 specifically talks about Dr. Singer's</p> <p>18 report. It's a statement about labor share.</p> <p>19 Q. Okay. Paragraph -- let's look at</p> <p>20 paragraph 13. In paragraph 13 you are -- am I</p> <p>21 correct that you're suggesting a criticism of</p> <p>22 Dr. Singer that he uses labor share or wage share as</p> <p>23 a benchmark for competitive markets?</p> <p>24 A. That's not what the paragraph says</p> <p>25 specifically, but that is the -- that's -- what you</p>

6 (Pages 18 to 21)

PAUL OYER. - HIGHLY CONFIDENTIAL

<p style="text-align: right;">22</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 just said is consistent with my argument.</p> <p>3 Q. Okay. Consistent with your opinion?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Okay. And --</p> <p>6 A. Yes.</p> <p>7 Q. All right.</p> <p>8 A. By about 4:00 p.m. I will have gotten that</p> <p>9 figured out.</p> <p>10 Q. Not at all.</p> <p>11 And then paragraph 12, the last sentence</p> <p>12 you say "Labor share is driven by overall firm</p> <p>13 revenues which includes many factors beyond the</p> <p>14 control of and related to the value of the worker."</p> <p>15 That is your view of the nature of labor share; is</p> <p>16 that correct?</p> <p>17 A. Right. Yes.</p> <p>18 Q. Okay. All right.</p> <p>19 Let's talk about level of pay. So if we</p> <p>20 look at page 5, paragraph 17, in talking about level</p> <p>21 of pay you say "The level of the individual's</p> <p>22 pay" -- I'm eliminating some words for simplicity.</p> <p>23 "The level of the individual's pay is the relevant</p> <p>24 benchmark and is a natural proxy of the worker's</p> <p>25 marginal product of labor"; do you see that?</p>	<p style="text-align: right;">24</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 labor market the firm is willing to pay the worker</p> <p>3 the marginal product of his or her labor, yes?</p> <p>4 A. Sorry. I hate to be picky, but can you say</p> <p>5 that again?</p> <p>6 Q. No, please.</p> <p>7 A. Can you read that back to me? Either</p> <p>8 way.</p> <p>9 MR. DAVIS: Could you read that question</p> <p>10 back, please.</p> <p>11 (Record read as requested.)</p> <p>12 MR. WIDNELL: Objection, misstates the --</p> <p>13 the report.</p> <p>14 BY THE WITNESS:</p> <p>15 A. So the reason I asked her to read it back</p> <p>16 is you put in a caveat that I'm going to quibble</p> <p>17 with and it's like this is not that important, but</p> <p>18 let's be careful. You said in a competitive labor</p> <p>19 market the firm is willing to pay the worker up to</p> <p>20 his or her marginal product of labor. In any labor</p> <p>21 market the firm is willing to pay the worker up to</p> <p>22 his or her marginal product of labor. So in a</p> <p>23 monopsonistic labor market they might not have to.</p> <p>24 No firm wants to pay anybody their marginal product</p> <p>25 of labor. I want -- I want to pay you zero, right?</p>
<p style="text-align: right;">23</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 A. I do.</p> <p>3 Q. And that's consistent with your opinion?</p> <p>4 A. Yes.</p> <p>5 Q. And you also note that labor economists</p> <p>6 sometimes use the natural log of a worker's</p> <p>7 compensation or level of pay rather than the level</p> <p>8 of pay itself; is that correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Okay. Can we use "wage level" to mean</p> <p>11 level of pay or its natural log just for clarity of</p> <p>12 our conversation today?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And if there's a distinction at some</p> <p>15 point between level of pay and the natural log of</p> <p>16 level of pay, I'll ask you to draw that distinction.</p> <p>17 Is that okay?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. All right.</p> <p>20 I think we've been over this, but just</p> <p>21 to -- just to confirm, the last sentence of</p> <p>22 paragraph 15 it says "The firm is willing to pay the</p> <p>23 worker the additional value that the employee</p> <p>24 creates with the assumption that the market is</p> <p>25 competitive." That means that in a competitive</p>	<p style="text-align: right;">25</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 Q. Okay.</p> <p>3 A. In a competitive labor market you have --</p> <p>4 you have to pay the person their product -- marginal</p> <p>5 product of labor because somebody else will if you</p> <p>6 don't. Or at least you have to pay -- at the very</p> <p>7 least you have to pay them their marginal product of</p> <p>8 labor at the next best opportunity for that person.</p> <p>9 Q. Okay. Good.</p> <p>10 So I just want to be clear about this. So</p> <p>11 you say firms are always willing to pay the worker</p> <p>12 the additional value that the employee creates,</p> <p>13 period. However, in some markets the firm has to</p> <p>14 pay that amount, competitive markets, and in other</p> <p>15 markets the firm may not have to pay that amount,</p> <p>16 monopsonistic labor markets, for example. Is that</p> <p>17 right?</p> <p>18 A. I agree.</p> <p>19 MR. WIDNELL: Objection, misstates.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I basically agree with what you said, yes.</p> <p>22 Q. What part do you disagree with?</p> <p>23 A. Oh, I don't think I disagree with any of</p> <p>24 it. So I agree with it.</p> <p>25 Q. Okay. Good.</p>

7 (Pages 22 to 25)

PAUL OYER. - HIGHLY CONFIDENTIAL

<p style="text-align: right;">26</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL 2 Can you explain -- you started to do this 3 and I just want to make sure I understand. Why is a 4 firm forced in a competitive labor market to pay the 5 workers their marginal product of labor? 6 A. So in the most basic, truly competitive 7 labor market you can imagine labor is just a pure 8 commodity. 9 Q. Okay. 10 A. And so I can go be a professor, a teacher 11 at any school and I create as much value for all of 12 those different schools. So Stanford offers me a 13 salary and, you know, anytime I want I can call up 14 Berkeley and say what will you pay for me to move 15 over there, and they'll tell -- they'll make an 16 offer based on their expectation of my value. And 17 if the market is competitive, that means that over 18 time with some information gathering we can all 19 figure out how much marginal value I would bring. 20 So Berkeley will end up offering me, after some back 21 and forth, my marginal product of labor, and 22 Stanford essentially has -- has to at that point 23 choose whether to pay me my marginal product of 24 labor or let me go. As long as -- as long as my 25 marginal product of labor is as high or higher than</p>	<p style="text-align: right;">28</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL 2 a minute ago about Stanford and Berkeley. If 3 Stanford is paying me X dollars but I'm actually 4 worth 2X to Stanford, like my -- and X has to be 5 greater than zero for this to work. 6 Q. It's good you can say this with no 7 bitterness in your voice. 8 A. Stanford has been very good to me. I have 9 no complaints, for the record. 10 Okay. So if -- if I'm producing 2X and 11 Stanford is only paying me X, in the world we talked 12 about before Berkeley is offering me -- first 13 they're offering me 1.1 times X and then we're -- 14 you know, the bidding keeps going until we get to 15 2X, which is my marginal product of labor. But 16 without Berkeley there's no reason that that has to 17 happen. So that's what market power is all about, 18 the absence of that outside bidder. 19 Q. Okay. And I think you said before that in 20 drawing a distinction between what firms are willing 21 to pay and what they have to pay and what they will 22 pay that all firms want to pay as little as they 23 can. However, when they don't have to -- or not 24 however. And so when they don't have to, when 25 there's not competition, the absence of that</p>
<p style="text-align: right;">27</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL 2 my salary, they're going to go ahead and offer me 3 that. So it's just like any other competitive 4 market. We end up bidding up to the -- we end up 5 bidding up to the point where cost equals revenue -- 6 marginal cost equals marginal benefit. 7 Q. Okay. I think I understand. I just want 8 to make sure I get the gist of what you just said. 9 A. Sure. 10 Q. So it sounds like in a competitive labor 11 market the competition between either present or 12 prospective employing firms forces a firm to pay up 13 to the marginal product -- well, to pay the marginal 14 product of labor of a worker; is that a fair 15 summary? 16 A. That's a fair summary. 17 Q. Okay. 18 Now, in -- on page 5, paragraph 18 you're 19 discussing a monopsonistic labor market, and in the 20 second sentence you say, in part, "In a 21 monopsonistic labor market where a firm has market 22 power over its workers the firm will pay its workers 23 less than their marginal product of labor." Why is 24 that? 25 A. Well, again, come back to my example I gave</p>	<p style="text-align: right;">29</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL 2 competition allows them to pay lower amounts than 3 the marginal product of labor; and given that 4 option, that's what they'll do. Is that a fair 5 statement? 6 A. Yeah, I think so. 7 Q. Okay. What effect, if any, would standard 8 economics predict would be the effect on the number 9 of workers hired when a firm has monopsonistic power 10 and uses that to pay less than the marginal product 11 of labor to its workers? 12 A. So let's stop and think about that. So if 13 the product market is -- see, we'd have to think 14 this through carefully, but if the product market is 15 competitive, then I would presume that by 16 lowering -- by being able to lower the cost of the 17 input you would -- you would -- on the one hand the 18 firm's demand would be higher so that would lead you 19 to think that the numbers would go up; but by the 20 same token, if the wage is -- if a monopsonistic 21 wage is lower than a competitive market wage, so 22 that's going to push labor demand -- I'm sorry -- 23 labor supply down. 24 So I don't know that -- off the top of my 25 head, I can't tell you that there's a -- that</p>

8 (Pages 26 to 29)

PAUL OYER. - HIGHLY CONFIDENTIAL

<p style="text-align: right;">30</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 there's a simple answer to that. I know that -- I</p> <p>3 know that in certain contexts we talk about when</p> <p>4 monopsony -- when monopsony is undone, when a wage</p> <p>5 is pushed up in a monopsonistic market that leads to</p> <p>6 increases in labor supply that lead to an increase</p> <p>7 in employment despite the price of wages going up,</p> <p>8 but I think it can go the other way too.</p> <p>9 So I'd have to think about it, but</p> <p>10 my off-the-top-of-my-head answer is that you can't</p> <p>11 make an assumption one way -- you cannot make a firm</p> <p>12 prediction one way or the other. It depends on the</p> <p>13 elasticity of the supply and the demand curves for</p> <p>14 labor.</p> <p>15 Q. Let's -- let's simplify the hypothetical</p> <p>16 slightly and see if that makes it easier to -- to</p> <p>17 give a clear prediction. Let's assume the output --</p> <p>18 the supply and demand curves -- hmm. Let me think</p> <p>19 about this.</p> <p>20 Let's assume the output in the product</p> <p>21 market is not sensitive to cost.</p> <p>22 A. I'm not sure what that means. I mean --</p> <p>23 Q. Supposing there's a monopoly in the output</p> <p>24 market.</p> <p>25 A. Uh-huh.</p>	<p style="text-align: right;">32</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 So what we want -- what you want to think</p> <p>3 about is a world where we have a competitive labor</p> <p>4 market and then some firm starts to have the ability</p> <p>5 to exert monopsony power on its workers and that</p> <p>6 firm has monopsonistic power in the product</p> <p>7 market.</p> <p>8 Q. Yes.</p> <p>9 A. So it lowers -- it starts -- it lowers the</p> <p>10 wage and if nothing else changed, it -- if it didn't</p> <p>11 change its quantity it would increase its profits</p> <p>12 because everything has -- nothing has changed. It's</p> <p>13 still charging the same in the product market.</p> <p>14 Now, having said that -- now, the world</p> <p>15 isn't that simple because once we lower the cost to</p> <p>16 the firm it actually will lower its price in the</p> <p>17 product market too. Even if it's a monopsonistic</p> <p>18 firm it's going to lower its price in the product</p> <p>19 market because it's always setting its marginal</p> <p>20 revenue equal to its marginal cost. So its marginal</p> <p>21 cost just went down. So it's going to lower its</p> <p>22 price. It's going to want to sell more because its</p> <p>23 profit -- its unit profits went up.</p> <p>24 Q. So you're saying a monopolist will set its</p> <p>25 marginal costs equal to its marginal revenue?</p>
<p style="text-align: right;">31</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 Q. So the ordinary analysis of supply and</p> <p>3 demand wouldn't play out as would occur in a</p> <p>4 competitive market. Would that change your answer</p> <p>5 in terms of the effect of a firm -- a monopsonistic</p> <p>6 firm paying workers below the marginal product of</p> <p>7 their labor?</p> <p>8 A. Okay. But in a monopsonistic labor -- in a</p> <p>9 monopsonistic product market --</p> <p>10 Q. Yeah.</p> <p>11 A. -- so now you increase the wage which</p> <p>12 increases the cost to the firm of -- if we -- sorry.</p> <p>13 If we go from monopsonistic to nonmonopsonistic</p> <p>14 labor market --</p> <p>15 Q. Do you mind if I -- what if we turn that</p> <p>16 around.</p> <p>17 A. Okay.</p> <p>18 Q. So go from competitive to monopsonistic.</p> <p>19 A. Sure.</p> <p>20 Q. It should be the same theoretically, but</p> <p>21 just to keep it fair.</p> <p>22 A. So that's going to lower the wage --</p> <p>23 Q. I'm sorry. I'm at least as guilty as you</p> <p>24 are, but let's try to slow down.</p> <p>25 A. Yep. Okay. Are you ready?</p>	<p style="text-align: right;">33</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 A. Sure. All firms set their marginal revenue</p> <p>3 equal to their marginal cost. I have to caveat when</p> <p>4 I say that. I could come up with some odd</p> <p>5 situations where a firm doesn't set its marginal</p> <p>6 revenue to its marginal cost. To a first</p> <p>7 approximation, all firms set their marginal revenue</p> <p>8 equal to their marginal cost.</p> <p>9 THE REPORTER: You have to slow down,</p> <p>10 please.</p> <p>11 BY MR. DAVIS:</p> <p>12 Q. So even when you're making a small point</p> <p>13 that you want your students not to write down,</p> <p>14 please do speak slowly because our poor stenographer</p> <p>15 has to write everything down.</p> <p>16 All right. Let's walk through a</p> <p>17 hypothetical. On page 5, paragraph 16 you use the</p> <p>18 example of a salesperson, right? Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Great. I want to use that example to</p> <p>21 clarify some basic concepts. Is it fair to say that</p> <p>22 in a competitive market we would expect the</p> <p>23 salesperson's compensation to equal the marginal</p> <p>24 product of his or her labor?</p> <p>25 A. Yes.</p>

9 (Pages 30 to 33)

PAUL OYER. - HIGHLY CONFIDENTIAL

<p style="text-align: right;">34</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 Q. To simplify the example and to make it more</p> <p>3 concrete, please assume the salesperson sells</p> <p>4 widgets -- I apologize for the lack of creativity --</p> <p>5 and gets paid purely on commission. Okay. Let's</p> <p>6 say the commission is 10 percent of the sales price</p> <p>7 of a widget and, again, assume the labor market is</p> <p>8 competitive. So that would mean that the marginal</p> <p>9 product of labor of the salesperson is 10 percent of</p> <p>10 the revenue generated from the sale; is that</p> <p>11 correct?</p> <p>12 A. I observe a firm that pays its salespeople</p> <p>13 10 percent as a commission -- their compensation</p> <p>14 structure is the salesperson has -- their pay is</p> <p>15 zero plus 10 percent of all revenue generated</p> <p>16 through their sales?</p> <p>17 Q. Correct.</p> <p>18 A. And so -- okay. So now what was your</p> <p>19 question about that?</p> <p>20 Q. Would that mean that the marginal product</p> <p>21 of labor of the salesperson is 10 percent of the</p> <p>22 revenue generated from the event, which is a sale?</p> <p>23 A. Right. So it's a little more -- that's --</p> <p>24 it's much more -- I know you wanted to keep it</p> <p>25 hypothetical and simple, but, of course, the world</p>	<p style="text-align: right;">36</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 calculate that on the whole this salesperson's</p> <p>3 marginal product of labor is 10 percent of the</p> <p>4 revenue it generates from these various revenue-</p> <p>5 generating events; is that fair to say?</p> <p>6 MR. WIDNELL: Objection, form.</p> <p>7 BY THE WITNESS:</p> <p>8 A. That's more or less fair to say. I'm going</p> <p>9 to put it slightly differently again.</p> <p>10 Q. Okay.</p> <p>11 A. Because when we talk -- there's a</p> <p>12 natural -- there's a natural confusion that comes</p> <p>13 out of using sales commissions here, which is that</p> <p>14 the marginal -- let's say the marginal widget you're</p> <p>15 thinking, okay, the salesperson gets 10 percent, so</p> <p>16 that's their marginal product of labor. But when</p> <p>17 deciding whether or not -- but when we think about</p> <p>18 what's the marginal product of labor of the</p> <p>19 employee -- when thinking about what's the marginal</p> <p>20 product of labor of the employee, we want to think</p> <p>21 about the firm making a decision do I hire this</p> <p>22 person or don't I hire this person; and in a</p> <p>23 competitive labor market, they're going to hire this</p> <p>24 person and the amount they pay them over some period</p> <p>25 of time is going to approximate the net benefits of</p>
<p style="text-align: right;">35</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 is much more complicated than that. So the</p> <p>3 marginal -- I'm going to let her catch up. So the</p> <p>4 marginal product of labor of that salesperson in</p> <p>5 equilibrium over some period of time is such that</p> <p>6 they're paid their marginal product of labor. That</p> <p>7 doesn't mean that on every single unit that their</p> <p>8 individual marginal product of labor was exactly</p> <p>9 10 percent.</p> <p>10 Q. To use your language from before, is it</p> <p>11 fair to say to a first approximation that the</p> <p>12 marginal product of the salesperson is 10 percent of</p> <p>13 the revenue generated from the sale?</p> <p>14 A. I would put it slightly differently.</p> <p>15 Q. Please.</p> <p>16 A. If we're in a competitive labor market and</p> <p>17 the person is being paid 10 percent of their -- a</p> <p>18 commission of 10 percent, then I would say that on</p> <p>19 average over a period of time the person's marginal</p> <p>20 product of labor is 10 percent of the revenue they</p> <p>21 generate.</p> <p>22 Q. Okay. And to be clear on the slippage, the</p> <p>23 reason you say on average is in the real world a</p> <p>24 firm may not be able to calculate exactly the</p> <p>25 marginal product of labor on each sale, but it can</p>	<p style="text-align: right;">37</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 bringing that person to work there.</p> <p>3 Q. And in this particular case, though -- I</p> <p>4 think I understand what you just said, but I'm not</p> <p>5 sure it speaks directly to the issue I'm trying to</p> <p>6 clarify.</p> <p>7 So the firm wants to pay the net benefits</p> <p>8 to the firm and that is the marginal product of</p> <p>9 labor, and the firm's best estimate of that amount</p> <p>10 in this instance is, on average, 10 percent of the</p> <p>11 revenues generated by these event -- sorry --</p> <p>12 revenue-generating events; is that fair to say?</p> <p>13 MR. WIDNELL: Objection to form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. I'm sorry, but I'm going to restate</p> <p>16 slightly again.</p> <p>17 Q. Okay.</p> <p>18 A. First of all, you said the firm will --</p> <p>19 wants to pay. The firm does not want to pay the</p> <p>20 marginal product of labor. They're willing to pay</p> <p>21 the marginal product of labor. They would prefer to</p> <p>22 pay zero.</p> <p>23 Q. Of course.</p> <p>24 A. The other -- the other slight way I would</p> <p>25 think about it is we mix up -- this commission is --</p>

10 (Pages 34 to 37)

PAUL OYER. - HIGHLY CONFIDENTIAL

<p style="text-align: right;">86</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 Q. That is an okay definition?</p> <p>3 A. That's an okay definition.</p> <p>4 Q. Do you know whether Zuffa pays fighters</p> <p>5 salaries?</p> <p>6 A. So I know that they guarantee people</p> <p>7 certain amounts for each fight and I know they have</p> <p>8 contracts that specify some number of fights and</p> <p>9 that sort of thing. I can't remember whether</p> <p>10 there's any promise of how many fights will be in a</p> <p>11 period of time.</p> <p>12 Q. Do you know if they pay -- whether Zuffa</p> <p>13 pays any fighters even if they don't fight?</p> <p>14 A. Yeah. I don't remember that. I don't -- I</p> <p>15 don't know.</p> <p>16 Q. So presumably you don't know what</p> <p>17 percentage, if any, of fighters receive salary from</p> <p>18 Zuffa?</p> <p>19 A. Yeah. I guess that -- I guess I don't know</p> <p>20 that.</p> <p>21 Q. Okay. Do you know whether Zuffa pays</p> <p>22 fighters for training?</p> <p>23 A. I don't know that for sure. I assume they</p> <p>24 don't.</p> <p>25 Q. You assume they don't, but you don't know?</p>	<p style="text-align: right;">88</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 get a share of the Pay-Per-View. There's another --</p> <p>3 and then there's a couple of other bonuses, some of</p> <p>4 which are subjective, some of which are more</p> <p>5 guaranteed along the lines of if you are fighter of</p> <p>6 the night you get some amount of money.</p> <p>7 Q. Okay. Do you know whether Zuffa provides</p> <p>8 healthcare insurance to his fighters?</p> <p>9 A. I don't know for a fact, but I would</p> <p>10 imagine given that they're independent contractors</p> <p>11 that they do not.</p> <p>12 Q. Okay.</p> <p>13 Do you think wage share is ever an</p> <p>14 appropriate benchmark for competitive pay?</p> <p>15 A. I can't think of an example right here</p> <p>16 where I would say it was an appropriate benchmark.</p> <p>17 Q. And that's true, as you sit here now at</p> <p>18 least, for all workers in all circumstances?</p> <p>19 A. Yes.</p> <p>20 Q. And is that true even if compensation, say,</p> <p>21 for a salesperson is set at a percentage of revenue</p> <p>22 generation?</p> <p>23 A. Yes.</p> <p>24 Q. So to generalize a little bit to make sure</p> <p>25 I'm clear, the form that compensation takes, for</p>
<p style="text-align: right;">87</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 A. Right.</p> <p>3 Q. Okay. Do you know how much -- do you know</p> <p>4 the structure of the payments that Zuffa makes to</p> <p>5 fighters for particular fights?</p> <p>6 A. I have a pretty good general sense for it.</p> <p>7 Q. What would that be?</p> <p>8 A. That there's usually a guarantee, you know,</p> <p>9 just if you engage in a fight you'll be paid X</p> <p>10 dollars. There's usually a win pool, I believe is</p> <p>11 the term. I could be wrong about the exact</p> <p>12 terminology there.</p> <p>13 Q. And what, to your understanding as you sit</p> <p>14 here now, is a win pool? How does that work?</p> <p>15 A. It's an extra payment if you win your</p> <p>16 fight.</p> <p>17 Q. Okay.</p> <p>18 A. And it's usually equal to the show-up fee,</p> <p>19 if I'm -- if I remember correctly.</p> <p>20 Q. And are there any other payments of which</p> <p>21 you're aware?</p> <p>22 A. There are. Although I believe for the</p> <p>23 majority of fighters and the majority of fights what</p> <p>24 I just said is all there is. I could be wrong about</p> <p>25 that. There are definitely examples of fighters who</p>	<p style="text-align: right;">89</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 example, a percentage of revenue generation, doesn't</p> <p>3 necessarily determine the right approach to how a</p> <p>4 labor economist should analyze that compensation; is</p> <p>5 that fair to say?</p> <p>6 A. I don't understand the question in the</p> <p>7 sense that you seem to be equating the commissions a</p> <p>8 salesperson is paid to their labor share in the</p> <p>9 sense that Singer used the term or wage share.</p> <p>10 Q. And what would be -- what would be the</p> <p>11 difference between, in your mind, wage share or</p> <p>12 labor share as you use it in your opinion and paying</p> <p>13 a salesperson a percentage of a revenue- generating</p> <p>14 event such as a sale?</p> <p>15 A. Right. So one is a share of a large event</p> <p>16 to which the one person was potentially a very minor</p> <p>17 party and the other is tied to that person's</p> <p>18 individual output.</p> <p>19 Q. So there's an empirical question that</p> <p>20 matters here about how closely a particular worker's</p> <p>21 output is tied to the generation of revenue; is that</p> <p>22 fair to say?</p> <p>23 A. Well, I'm not -- I think what you're --</p> <p>24 there's an empirical question that you just said</p> <p>25 that relates to -- that makes it so that our</p>

23 (Pages 86 to 89)

PAUL OYER. - HIGHLY CONFIDENTIAL

<p style="text-align: right;">90</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 discussion of salespeople is, in my mind, a wholly</p> <p>3 different thing than any discussion of -- of MMA</p> <p>4 fighters.</p> <p>5 Q. So let's stick to the salespeople for a</p> <p>6 moment, though.</p> <p>7 A. Okay.</p> <p>8 Q. You're drawing that connection, but my</p> <p>9 question didn't.</p> <p>10 A. Okay. Okay.</p> <p>11 Q. So just sticking to the salesperson, right.</p> <p>12 Let's take a salesperson who is paid a percentage of</p> <p>13 revenue generated by an event, a sale, and let's</p> <p>14 assume that salesperson is paid purely in that way,</p> <p>15 on commission.</p> <p>16 A. Uh-huh.</p> <p>17 Q. Would it be appropriate to use wage share</p> <p>18 as a labor economist to analyze the marginal product</p> <p>19 of labor of that salesperson?</p> <p>20 A. No.</p> <p>21 Q. And what I was doing is then just drawing</p> <p>22 the more general point, which I think you're</p> <p>23 agreeing with implicitly but I want to make</p> <p>24 explicit.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">92</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 for these journals review submissions to the</p> <p>3 journals?</p> <p>4 A. Yes.</p> <p>5 Q. Can you briefly describe the process</p> <p>6 through which you go for evaluating -- in evaluating</p> <p>7 a submitted article?</p> <p>8 A. So do you want me to talk about my role as</p> <p>9 a referee, which is what you've pointed to, or as a</p> <p>10 journal editor? Those are very distinct things.</p> <p>11 Q. So as a referee when you receive an article</p> <p>12 that you are going to assess, what is your process</p> <p>13 for assessing whether that article might be</p> <p>14 appropriate for publication or inappropriate for</p> <p>15 publication?</p> <p>16 A. So the first thing I do when I receive a</p> <p>17 request from a journal to referee a paper is I look</p> <p>18 quickly over the paper to see if it's something</p> <p>19 about which I have an appropriate expertise.</p> <p>20 Q. Okay.</p> <p>21 A. So often I'll get a paper to referee and</p> <p>22 I'll look at it -- I should say on occasion I will</p> <p>23 get a paper to referee and I'll look at it, and I</p> <p>24 will say I don't know enough about this topic to</p> <p>25 offer an opinion about whether this paper should be</p>
<p style="text-align: right;">91</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 Q. And that means that there isn't necessarily</p> <p>3 a parallel between the form that compensation takes</p> <p>4 in the case of a salesperson, a percentage of the</p> <p>5 revenue from a revenue-generating event, and on the</p> <p>6 other hand the appropriate form of analysis that a</p> <p>7 labor economist would use in analyzing the marginal</p> <p>8 product of labor; is that correct?</p> <p>9 A. Yeah, I think I would agree with that.</p> <p>10 MR. DAVIS: Why don't we take a break.</p> <p>11 THE VIDEOGRAPHER: Going off the record at</p> <p>12 10:47.</p> <p>13 (A short break was had.)</p> <p>14 THE VIDEOGRAPHER: We are going back on the</p> <p>15 record at 11:01. This begins disk No. 3.</p> <p>16 BY MR. DAVIS:</p> <p>17 Q. Okay. So I'm looking at your report, which</p> <p>18 is Exhibit 2, I believe. You probably don't need to</p> <p>19 look at it for this question, but I'm looking at</p> <p>20 page 24 where you list yourself as a referee for</p> <p>21 various journals, primarily it seems economic</p> <p>22 journals. And so you do serve as a referee for</p> <p>23 numerous economic journals; is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. Is one of the things you do as a referee</p>	<p style="text-align: right;">93</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 published or not.</p> <p>3 Q. Okay.</p> <p>4 A. So that's the first step. Conditional on</p> <p>5 it's appropriate for me to referee the paper, I will</p> <p>6 then read the paper. Well, first you tell the</p> <p>7 journal I will be able to provide you with a</p> <p>8 refereed report. Some time goes by, which is always</p> <p>9 longer than the editor wants and longer than you</p> <p>10 think it's going to be, and you finally sit down,</p> <p>11 usually on an airplane, and read through the paper</p> <p>12 carefully and assess it on several -- and then -- so</p> <p>13 you -- I assess it on several grounds. One is is it</p> <p>14 correct, is it interesting, is it novel relative to</p> <p>15 prior research on related topics. Those are the</p> <p>16 fundamental criteria.</p> <p>17 And then I write -- and then I write two</p> <p>18 things. I write what's called a refereed report,</p> <p>19 which can be anywhere from a paragraph to six pages,</p> <p>20 in which I say here's what this paper does. These</p> <p>21 are fundamentally critical things. Even on a</p> <p>22 wonderful paper there's nothing good in a referee</p> <p>23 report other than up front you say this is a good</p> <p>24 paper or something. The rest is entirely critical</p> <p>25 because that's how you make the paper -- that's the</p>

24 (Pages 90 to 93)

PAUL OYER. - HIGHLY CONFIDENTIAL

<p style="text-align: right;">94</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 job of the referee is to point out the possible</p> <p>3 flaws.</p> <p>4 So, like I said, it can be anywhere from a</p> <p>5 paragraph to pages and pages where you'll say things</p> <p>6 like -- anything from this paper is derivative of</p> <p>7 such and such, this paper is so poorly written I</p> <p>8 don't even know what they're trying to accomplish,</p> <p>9 and then -- but it can be other things like this</p> <p>10 paper is really good on balance. Here are some</p> <p>11 things to think about, and it can be as little as</p> <p>12 typos or as big as I think the assumption made here</p> <p>13 is invalid. I'd like to see how the results change</p> <p>14 if you were to change that assumption.</p> <p>15 Q. Okay.</p> <p>16 A. Sorry. That's No. 1. Do you want -- the</p> <p>17 full evaluation then requires a letter to the editor</p> <p>18 of the journal because the editor of the journal has</p> <p>19 to make a decision about what to do. So you write a</p> <p>20 letter to the editor of the journal, which is</p> <p>21 usually just about a paragraph, and it says dear</p> <p>22 editor, I've read this paper. I have -- and I --</p> <p>23 you know, here are -- you just basically at that</p> <p>24 point say things that you don't necessarily want to</p> <p>25 say directly to the author, and then you offer a</p>	<p style="text-align: right;">96</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 Q. Somewhere between 20 and 50 hours?</p> <p>3 A. I believe that's correct.</p> <p>4 Q. How many hours did you spend preparing your</p> <p>5 report?</p> <p>6 A. The vast majority of what I just said was</p> <p>7 spent preparing my report.</p> <p>8 Q. How many hours did you spend reviewing the</p> <p>9 evidentiary record in this case?</p> <p>10 A. I just have no idea.</p> <p>11 Q. No idea?</p> <p>12 A. I mean, some large fraction of that number</p> <p>13 I just gave you.</p> <p>14 Q. Okay. When were you retained?</p> <p>15 A. I can look that up. I don't remember.</p> <p>16 Q. Any general sense of the month?</p> <p>17 A. Late October maybe.</p> <p>18 Q. Late October of -- of --</p> <p>19 A. 2017.</p> <p>20 Q. -- 2017?</p> <p>21 When you said that there's some large</p> <p>22 fraction of the 20 to 50 hours you spent reviewing</p> <p>23 the evidentiary record, by "large fraction" did you</p> <p>24 mean a majority of your time?</p> <p>25 A. I don't -- off the top of my head I just</p>
<p style="text-align: right;">95</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 recommendation.</p> <p>3 Q. Okay. Okay. You said you read the</p> <p>4 article -- the paper carefully. Why carefully?</p> <p>5 A. Well, okay. So I'm going to have to</p> <p>6 qualify that a little bit. In any paper where I'm</p> <p>7 going to recommend that they consider -- seriously</p> <p>8 consider publishing the paper or where it's</p> <p>9 possible -- or where I see any possibility that I'm</p> <p>10 going to do that, then I have to read the paper</p> <p>11 carefully. The reason I qualified it is</p> <p>12 occasionally you'll get a paper and after five</p> <p>13 minutes to 45 minutes you realize this is just not a</p> <p>14 good paper.</p> <p>15 Q. Okay.</p> <p>16 A. And you just write to the editor, and you</p> <p>17 write a very short referee report explaining the</p> <p>18 fundamental flaws of the paper, and you move on with</p> <p>19 your life.</p> <p>20 Q. Okay. Okay.</p> <p>21 How many hours have you spent working on</p> <p>22 this litigation?</p> <p>23 A. Off the top of my head I don't know.</p> <p>24 Q. Do you have any ballpark sense?</p> <p>25 A. More than 20 hours, less than 50 hours.</p>	<p style="text-align: right;">97</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 don't know.</p> <p>3 Q. Do you have any sense of the proportions</p> <p>4 between reviewing the evidentiary record and</p> <p>5 drafting the report?</p> <p>6 A. I can't say anything reliable about that.</p> <p>7 Q. Did you read drafts of any of the -- of any</p> <p>8 of the reports prepared by other experts that have</p> <p>9 been retain by the UFC?</p> <p>10 A. Did I read drafts of other experts'</p> <p>11 reports?</p> <p>12 Q. Of experts retained by the UFC.</p> <p>13 A. Other experts retained by the UFC.</p> <p>14 Q. In this case.</p> <p>15 A. In this case. Are we -- are we discussing</p> <p>16 this? I thought we were --</p> <p>17 MR. CRAMER: We can know whether he read</p> <p>18 them.</p> <p>19 MR. WIDNELL: Yeah. So just to be clear,</p> <p>20 I'm not sure that he -- Professor Oyer understands</p> <p>21 the stipulation entirely, but you can answer</p> <p>22 questions --</p> <p>23 THE WITNESS: My mistake.</p> <p>24 MR. WIDNELL: -- about whether you reviewed</p> <p>25 a draft or reviewed an actual expert report. But</p>

25 (Pages 94 to 97)

PAUL OYER. - HIGHLY CONFIDENTIAL

<p style="text-align: right;">98</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 you do not need to answer questions -- and correct</p> <p>3 me if you disagree -- about actual communication</p> <p>4 with the -- that went into your preparing your</p> <p>5 report.</p> <p>6 MR. DAVIS: I guess with the -- we can see</p> <p>7 if we disagree, but with -- well, why don't we start</p> <p>8 with that --</p> <p>9 MR. WIDNELL: Yeah.</p> <p>10 MR. DAVIS: -- and then we can move on to</p> <p>11 what --</p> <p>12 MR. WIDNELL: There may just be nuances.</p> <p>13 That's sort of a general overview.</p> <p>14 MR. DAVIS: Fair enough.</p> <p>15 BY THE WITNESS:</p> <p>16 A. I believe I skimmed a copy of Topel's</p> <p>17 report after I had drafted my own report.</p> <p>18 Q. You skimmed it after you drafted your own</p> <p>19 report?</p> <p>20 A. Correct.</p> <p>21 Q. And do you know whether it was the final</p> <p>22 version of the Topel report or a draft of the Topel</p> <p>23 report?</p> <p>24 A. I would imagine it was a draft, but I don't</p> <p>25 know for sure.</p>	<p style="text-align: right;">100</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 the stipulation not to specifically address the back</p> <p>3 and forth that you had with -- with outside counsel</p> <p>4 in preparing.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Okay. So I think I can pretty safely</p> <p>7 address that by just saying that the court documents</p> <p>8 were provided to me.</p> <p>9 Q. Did you select them from a list made</p> <p>10 available, or did -- did you simply receive them and</p> <p>11 then review them once you'd received them?</p> <p>12 A. Oh, I -- I selected -- I said I want this,</p> <p>13 this, and this.</p> <p>14 Q. What were you given that allowed you to</p> <p>15 select them? What list did you receive?</p> <p>16 A. My decisions were mostly based on</p> <p>17 reading -- reading the two expert reports that I was</p> <p>18 asked to comment on and the complaint.</p> <p>19 Q. Okay.</p> <p>20 MR. WIDNELL: Are you asking for a</p> <p>21 description of the list that he would have gotten</p> <p>22 from us?</p> <p>23 MR. DAVIS: Just the nature of whether it</p> <p>24 was a curated list or the full list of the documents</p> <p>25 in the case.</p>
<p style="text-align: right;">99</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did you communicate with any of the other</p> <p>3 experts retained about the substance of your report</p> <p>4 or of theirs?</p> <p>5 A. No.</p> <p>6 Q. And you say you reviewed the Topel report</p> <p>7 only after you'd completed yours?</p> <p>8 A. After I had drafted my own report.</p> <p>9 Q. After you drafted your own report. Did you</p> <p>10 rely on anything in that report in your report?</p> <p>11 A. I did not.</p> <p>12 Q. You list materials on which you relied on</p> <p>13 pages 26 and 27 of your report. Did you review any</p> <p>14 other materials on which you relied in your report?</p> <p>15 A. No, I don't think so.</p> <p>16 Q. Did you speak with any Zuffa employees or</p> <p>17 executives in preparing your report?</p> <p>18 A. No.</p> <p>19 Q. Did you speak to any MMA fighters in</p> <p>20 preparing your report?</p> <p>21 A. No.</p> <p>22 Q. Are you familiar with an article -- before</p> <p>23 we change subjects, how did you obtain the materials</p> <p>24 on which you relied in preparing your report?</p> <p>25 MR. WIDNELL: I'm going to instruct you per</p>	<p style="text-align: right;">101</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 MR. WIDNELL: That's a description, right?</p> <p>3 MR. DAVIS: Yes.</p> <p>4 MR. WIDNELL: I think that's not covered by</p> <p>5 the stipulation.</p> <p>6 MR. CRAMER: He was moving on.</p> <p>7 MR. WIDNELL: Okay. Just to be clear,</p> <p>8 though.</p> <p>9 MR. DAVIS: Right. When you say "not</p> <p>10 covered by the stipulation" --</p> <p>11 MR. WIDNELL: Well, it would be helpful for</p> <p>12 us to know because we'll have the same level of</p> <p>13 questioning for your experts. So are you taking the</p> <p>14 position that you can ask for an actual description</p> <p>15 of the kind of information that was provided as a</p> <p>16 sort of menu to the experts?</p> <p>17 MR. CRAMER: If the expert relies upon it,</p> <p>18 then the answer is yes.</p> <p>19 MR. WIDNELL: Only if the expert relies</p> <p>20 upon it.</p> <p>21 MR. CRAMER: (inaudible)</p> <p>22 MR. WIDNELL: So you weren't asking for</p> <p>23 information about stuff that Professor Oyer did not</p> <p>24 rely on, is that right, just to be clear?</p> <p>25 MR. DAVIS: I guess what I'd say, since</p>

26 (Pages 98 to 101)

PAUL OYER. - HIGHLY CONFIDENTIAL

<p style="text-align: right;">102</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 we're moving on --</p> <p>3 MR. WIDNELL: Well, the nature of the</p> <p>4 questions you asked, I just want to make sure we're</p> <p>5 all on the same page, that you're not going to be</p> <p>6 using what's in any of his responses to suggest</p> <p>7 that -- that he either did or did not fully consider</p> <p>8 something based off of the questions you asked about</p> <p>9 what we provided him.</p> <p>10 MR. DAVIS: Well, I guess -- I think this</p> <p>11 is a conversation best --</p> <p>12 MR. WIDNELL: We can go off the record if</p> <p>13 you want.</p> <p>14 MR. DAVIS: Let's go off record.</p> <p>15 THE VIDEOGRAPHER: Going off the record at</p> <p>16 11:15.</p> <p>17 (Whereupon a discussion was had</p> <p>18 off the record.)</p> <p>19 THE VIDEOGRAPHER: Going back on the record</p> <p>20 at 11:16.</p> <p>21 BY MR. DAVIS:</p> <p>22 Q. Are you familiar with the article by Gerald</p> <p>23 Scully, "Player Salary Share and the Distribution of</p> <p>24 Player Earnings," 25: Managerial and Decision</p> <p>25 Economics, page 77 is the first page, 2004?</p>	<p style="text-align: right;">104</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 that.</p> <p>3 Q. If you need a few -- if you need a bit of</p> <p>4 time just to make sure that it's -- recall, all I'm</p> <p>5 asking you is whether he's using wage shares.</p> <p>6 (Witness reviewing document.)</p> <p>7 BY THE WITNESS:</p> <p>8 A. Okay. I would -- yep.</p> <p>9 Q. Does he appear to be using wage shares in</p> <p>10 his analysis?</p> <p>11 A. I believe that's what he's doing.</p> <p>12 Q. Okay. And without reviewing the paper any</p> <p>13 further, are you aware that Professor Scully</p> <p>14 analyzed compensation as a share of revenue for</p> <p>15 Major League Baseball, the National Basketball</p> <p>16 Association, the National Football League, and the</p> <p>17 National Hockey League to assess monopsony power?</p> <p>18 A. I was not aware of that.</p> <p>19 Q. Okay. Where in your report, if at all, do</p> <p>20 you discuss Dr. Scully's article?</p> <p>21 A. I do not discuss Dr. Scully's article.</p> <p>22 MR. DAVIS: Let's mark the next document as</p> <p>23 Exhibit 5.</p> <p>24 (Oyer Exhibit 5 was marked as</p> <p>25 requested.)</p>
<p style="text-align: right;">103</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 MR. DAVIS: We're going to mark this as</p> <p>4 Exhibit No. 4, I believe.</p> <p>5 (Oyer Exhibit 4 was marked as</p> <p>6 requested.)</p> <p>7 BY MR. DAVIS:</p> <p>8 Q. Okay. If you could turn to page 78. This</p> <p>9 is, as I just indicated, an article by Gerald W.</p> <p>10 Scully, "Player Salary Share and the Distribution of</p> <p>11 Player Earnings," 25: Managerial and Decision</p> <p>12 Economics, 77, year 2004; and on page 78, do you see</p> <p>13 in the bottom of the left column table 1?</p> <p>14 A. Yes.</p> <p>15 Q. And do you see where it says "Player</p> <p>16 compensation as a share of revenue in profession</p> <p>17 team sports"?</p> <p>18 A. Yes.</p> <p>19 Q. Is it fair to say that Professor Scully is</p> <p>20 analyzing professional athlete compensation using</p> <p>21 what we have called wage shares?</p> <p>22 MR. WIDNELL: Objection, form.</p> <p>23 BY THE WITNESS:</p> <p>24 A. I mean, do you want me to -- I'm going to</p> <p>25 need some time to look this over and agree with</p>	<p style="text-align: right;">105</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. DAVIS:</p> <p>3 Q. Are you familiar with the article by</p> <p>4 Lawrence M. Kahn, "The Sports Business as a Labor</p> <p>5 Market Laboratory," 14: Journal of Economic</p> <p>6 Perspectives, 2000?</p> <p>7 A. I am not familiar with this article.</p> <p>8 Q. And that is the article that I just marked</p> <p>9 as Exhibit 5. Okay. Please turn to page 81. If</p> <p>10 you turn to the last sentence of the first full</p> <p>11 paragraph, the second paragraph but the first full</p> <p>12 paragraph. He says "Moreover, baseball salaries as</p> <p>13 a percentage of team revenues rose from 17.6 percent</p> <p>14 in 1974 to 20.5 percent in 1977 to 41.1 percent in</p> <p>15 1982 further suggesting that free agency has had a</p> <p>16 structural effect on baseball salary determination"</p> <p>17 and cites Zimbalist 1992; do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Okay. And then further down in the last</p> <p>20 paragraph, in the middle of the paragraph, again,</p> <p>21 beginning "Moreover," Professor Kahn writes</p> <p>22 "Moreover, salaries as a percent of revenues fell</p> <p>23 from about 40 percent in 1985 to 32 percent in 1989</p> <p>24 during the collusion period," again citing</p> <p>25 Zimbalist. "In 1989 arbitrators levied a</p>

27 (Pages 102 to 105)

PAUL OYER. - HIGHLY CONFIDENTIAL

<p style="text-align: right;">106</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 200-million-dollar -- 280-million-dollar back-pay</p> <p>3 penalty on the owners to be paid out over the 1989</p> <p>4 to 1991 period as compensation for the losses</p> <p>5 imposed by collusion," citing Staudohar. Is that</p> <p>6 how it's pronounced, do you know?</p> <p>7 A. I've never heard of this person.</p> <p>8 Q. Okay. "And salaries as a percent of</p> <p>9 revenue bounced back to 43 percent by 1991," again</p> <p>10 citing Zimbalist. "The collusion episode provides a</p> <p>11 further illustration of the potential impact on</p> <p>12 monopsony on salaries."</p> <p>13 Am I correct that Professor Kahn is</p> <p>14 analyzing professional athlete compensation using</p> <p>15 wage shares?</p> <p>16 A. Professor Kahn is quoting a book written</p> <p>17 for a lay audience by Andrew Zimbalist in which he</p> <p>18 cites facts about labor share.</p> <p>19 Q. When you say "quoting," he's not actually</p> <p>20 quoting is he?</p> <p>21 A. My mistake. He is paraphrasing and citing</p> <p>22 facts stated in a book for a lay audience written by</p> <p>23 Andrew Zimbalist.</p> <p>24 Q. And is he relying on those underlying facts</p> <p>25 in his analysis?</p>	<p style="text-align: right;">108</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 (Witness reviewing document.)</p> <p>3 BY THE WITNESS:</p> <p>4 A. So what's the question?</p> <p>5 Q. The question is just whether Professor Kahn</p> <p>6 is analyzing professional athlete compensation using</p> <p>7 wage shares in these two paragraphs.</p> <p>8 A. Well, let's be clear about the conclusion</p> <p>9 he draws here. He says "The current episode</p> <p>10 provides a further illustration of the potential</p> <p>11 impact of monopsony on salaries."</p> <p>12 Q. That seems to be -- is that an answer to my</p> <p>13 question?</p> <p>14 A. Well, I just want to be clear about what</p> <p>15 we're -- so is that the analysis and conclusions</p> <p>16 we're talking about?</p> <p>17 Q. Yes.</p> <p>18 A. Okay. I mean, sure. He states some facts,</p> <p>19 and he says they're consistent with monopsony as a</p> <p>20 potential illustration of that.</p> <p>21 Q. And are those facts wage-share facts?</p> <p>22 A. Yes, they are.</p> <p>23 Q. Without further reviewing the paper, are</p> <p>24 you aware that Professor Kahn is analyzing the</p> <p>25 effects of anticompetitive conduct on player</p>
<p style="text-align: right;">107</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 A. I would have to read the paper to let you</p> <p>3 know.</p> <p>4 Q. Why don't you take a couple moments to read</p> <p>5 those two paragraphs to see if, in fact, he's</p> <p>6 relying on those facts as opposed to merely --</p> <p>7 MR. WIDNELL: I'm going to instruct you</p> <p>8 read the entire paper -- or review the entire paper</p> <p>9 to the extent that you feel there may be more</p> <p>10 information that could be relevant.</p> <p>11 MR. DAVIS: I suggest you read the</p> <p>12 paragraphs briefly, and then if you feel like</p> <p>13 there's more information that needs to be -- that</p> <p>14 you would need to answer that narrow question, then</p> <p>15 we can go from there.</p> <p>16 MR. WIDNELL: I think he should be entitled</p> <p>17 to see the entire document, look through the entire</p> <p>18 document at least before he makes some sort of</p> <p>19 conclusion about what --</p> <p>20 MR. DAVIS: I haven't disputed that yet.</p> <p>21 MR. WIDNELL: Well, you're instructing him</p> <p>22 just to review two paragraphs rather than to</p> <p>23 consider the paper as a whole I think.</p> <p>24 MR. DAVIS: I'm asking him to see if he</p> <p>25 needs to read more to answer that narrow question.</p>	<p style="text-align: right;">109</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 compensation using wage shares?</p> <p>3 MR. WIDNELL: I'm going to object for</p> <p>4 completeness. I'm not sure how that -- it sounds</p> <p>5 like you're suggesting there's a conclusion about</p> <p>6 the entire paper by telling him not to consider the</p> <p>7 entire paper.</p> <p>8 MR. DAVIS: I'm asking if he's aware. If</p> <p>9 he's not aware without reading the paper, he could</p> <p>10 simply answer the question I'm not aware one way or</p> <p>11 the other.</p> <p>12 BY THE WITNESS:</p> <p>13 A. So what's the question?</p> <p>14 Q. The question is, are you aware that in</p> <p>15 particular Professor Kahn is analyzing the effects</p> <p>16 of anticompetitive conduct on player compensation</p> <p>17 using wage shares?</p> <p>18 A. Among other -- he is using wage share among</p> <p>19 other means of -- among other methods and measures,</p> <p>20 sure.</p> <p>21 Q. Okay. And are you aware that Professor</p> <p>22 Kahn is analyzing wage shares for Major League</p> <p>23 Baseball to assess monopsony power?</p> <p>24 A. I -- now I think you've made it too strong.</p> <p>25 I mean, it's an illustration of potential impact.</p>

28 (Pages 106 to 109)

PAUL OYER. - HIGHLY CONFIDENTIAL

<p style="text-align: right;">110</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 Q. Okay. Where in your report do you discuss</p> <p>3 Dr. Kahn's article?</p> <p>4 A. I don't discuss Dr. Kahn's article.</p> <p>5 Q. The next document should be -- is</p> <p>6 Exhibit 6. Are you familiar with the article by</p> <p>7 John Vrooman, "Theory of the Perfect Game:</p> <p>8 Competitive Balance -- excuse me -- Competitive</p> <p>9 Balance in Monopoly Sports Leagues," 34: Review of</p> <p>10 Industrial Organization beginning on page 52009?</p> <p>11 A. Not that I know of.</p> <p>12 MR. DAVIS: Could you please mark this as</p> <p>13 Exhibit 6.</p> <p>14 (Oyer Exhibit 6 was marked as</p> <p>15 requested.)</p> <p>16 BY MR. DAVIS:</p> <p>17 Q. The very first page is page 5 and that has</p> <p>18 the abstract. In the middle of the abstract he says</p> <p>19 "Evidence of the sportsman effect is provided by</p> <p>20 erosion of monopsonistic exploitation in the four</p> <p>21 major American sports leagues where players now</p> <p>22 share about 60 percent of revenue." Am I correct</p> <p>23 that Professor Vrooman in that sentence is analyzing</p> <p>24 professional athlete compensation using wage shares?</p> <p>25 A. I don't know what -- what is the sportsman</p>	<p style="text-align: right;">112</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 A. Didn't I already answer that question?</p> <p>3 Q. Not for this article.</p> <p>4 A. You asked me if I was aware of this article</p> <p>5 before.</p> <p>6 Q. That probably is a logical corollary</p> <p>7 that --</p> <p>8 A. I was not aware of this article until you</p> <p>9 showed it to me.</p> <p>10 Q. Okay. So of course, you were not aware</p> <p>11 that Professor Vrooman analyzes wage share for the</p> <p>12 four major sports to assess monopsony power; is that</p> <p>13 correct?</p> <p>14 MR. WIDNELL: So you're not asking him</p> <p>15 whether or not he believes that's what he does.</p> <p>16 You're stating that's your belief about what he</p> <p>17 does, and you're asking if he's aware of that -- of</p> <p>18 whether or not that's the case; is that right?</p> <p>19 MR. DAVIS: Yes.</p> <p>20 MR. WIDNELL: Okay. Got it.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I was not aware of this article until you</p> <p>23 showed it to me. I'm going to leave it at that.</p> <p>24 Q. So you're not aware one way or another of</p> <p>25 any use that Professor Vrooman puts wage share to,</p>
<p style="text-align: right;">111</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 effect?</p> <p>3 Q. It's actually explained two sentences just</p> <p>4 above in the abstract.</p> <p>5 (Witness reviewing document.)</p> <p>6 BY THE WITNESS:</p> <p>7 A. Okay. So I'm sorry. The question again?</p> <p>8 Q. My question is just a very narrow one.</p> <p>9 Where he says in the third sentence -- he's talking</p> <p>10 about the erosion of monopsonistic exploitation in</p> <p>11 the four major sports leagues and says where players</p> <p>12 now share about 60 percent of revenues. My question</p> <p>13 is just that. When he speaks of 60 percent of the</p> <p>14 revenues in those leagues as what the players</p> <p>15 receive, is he using wage share as we've defined</p> <p>16 it?</p> <p>17 A. I think so.</p> <p>18 Q. Okay.</p> <p>19 Are you aware just as you sit here without</p> <p>20 reviewing the article, that Professor Vrooman</p> <p>21 analyzed compensation as a share of revenue in the</p> <p>22 NFL, Major League Baseball, NBA, and NHL to assess</p> <p>23 monopsony power?</p> <p>24 MR. WIDNELL: Objection, form.</p> <p>25 BY THE WITNESS:</p>	<p style="text-align: right;">113</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 including assessing monopsony power?</p> <p>3 A. That's right.</p> <p>4 Q. Okay. Where in your report did you discuss</p> <p>5 Dr. Vrooman's article?</p> <p>6 A. I do not discuss Dr. Vrooman's article.</p> <p>7 Q. Are you familiar with an article by John</p> <p>8 Twomey and James Monks with the title "Monopsony and</p> <p>9 Salary Suppression: The Case of Major League Soccer</p> <p>10 in the United States," 56: The American Economist,</p> <p>11 pages 20 to 28, and the year is 2011?</p> <p>12 A. No.</p> <p>13 MR. DAVIS: Let's mark this as Exhibit 7,</p> <p>14 which is the article I just described.</p> <p>15 (Oyer Exhibit 7 was marked as</p> <p>16 requested.)</p> <p>17 BY MR. DAVIS:</p> <p>18 Q. If you could turn to page 20, and in the</p> <p>19 abstract starting with the third sentence discussing</p> <p>20 the monopsonistic structure of Major League Soccer,</p> <p>21 the authors write "This monopsonistic structure was</p> <p>22 designed to eliminate competition for players across</p> <p>23 teams within the league and thus allow the league to</p> <p>24 suppress player salaries. This paper investigates</p> <p>25 how effective the MLS has been in achieving this</p>

29 (Pages 110 to 113)

PAUL OYER. - HIGHLY CONFIDENTIAL

<p style="text-align: right;">114</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 goal and finds that the MLS devotes only about 25</p> <p>3 percent of its revenues to player salaries compared</p> <p>4 to 50 to 60 percent in most other U.S. professional</p> <p>5 sports and professional soccer leagues abroad."</p> <p>6 My question is am I correct that Professors</p> <p>7 Twomey and Monks are using wage share to analyze</p> <p>8 athlete compensation?</p> <p>9 A. It would appear so.</p> <p>10 Q. Okay. And are you aware that Professors</p> <p>11 Twomey and Monks analyzed wage share for MLS to</p> <p>12 assess monopsony power?</p> <p>13 A. Until you showed me this article, I had</p> <p>14 never heard of John Twomey, James Monks, or The</p> <p>15 American Economist.</p> <p>16 Q. Is it fair to say that you are -- that</p> <p>17 means you're unaware that they analyze wage share</p> <p>18 for MLS to assess monopsony power?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. And where in your report do you</p> <p>21 discuss this Twomey and Monks article?</p> <p>22 A. I don't.</p> <p>23 Q. Are you familiar with a paper by James</p> <p>24 Monk -- Monks, "Revenue Shares and Monopsonistic</p> <p>25 Behavior in Intercollegiate Athletics"? It's dated</p>	<p style="text-align: right;">116</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 Looking at that, am I correct that</p> <p>3 Professor Monks is using wage share to analyze</p> <p>4 college athlete compensation?</p> <p>5 A. I would guess so based on this.</p> <p>6 Q. Based on that. Okay. And are you aware</p> <p>7 that Professor Monks analyzes wage share for college</p> <p>8 athletes to assess monopsony power?</p> <p>9 A. Well, you've just made me aware of it.</p> <p>10 Q. Okay. So you're now aware of it?</p> <p>11 A. That's right.</p> <p>12 Q. Where in your report do you discuss this</p> <p>13 paper by Monks?</p> <p>14 A. This unpublished working paper that I've</p> <p>15 never heard of and that leaps to a grand conclusion</p> <p>16 in the last line of the abstract that seems</p> <p>17 completely unwarranted, I don't refer to it.</p> <p>18 Q. Have you read the whole paper?</p> <p>19 A. I have not.</p> <p>20 Q. So do you know whether the contents of the</p> <p>21 paper justify the --</p> <p>22 A. Yeah. I mean, I can --</p> <p>23 Q. -- conclusion?</p> <p>24 A. The reason I say that in his abstract he</p> <p>25 says "Clearly," which leads me to think he's saying</p>
<p style="text-align: right;">115</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 on the paper itself September 2013.</p> <p>3 A. No.</p> <p>4 MR. DAVIS: Please mark this as Exhibit 8.</p> <p>5 (Oyer Exhibit 8 was marked as</p> <p>6 requested.)</p> <p>7 BY MR. DAVIS:</p> <p>8 Q. The paper I just described is Exhibit 8.</p> <p>9 Please turn to the first page after the title page</p> <p>10 where there's an abstract. In the last two</p> <p>11 sentences he writes, comparing the four major</p> <p>12 sports -- baseball, basketball, football and</p> <p>13 hockey -- to NCAA athletics, that whereas the major</p> <p>14 sports have negotiated aggregate salaries that</p> <p>15 represent over 50 percent of league-wide revenues,</p> <p>16 he then says "In comparison analyzing data from the</p> <p>17 post -- from the Office of Post-Secondary Education,</p> <p>18 OPE, of the Department of Education on 2,068</p> <p>19 institutions of higher education reveals that</p> <p>20 intercollegiate athletes receive payments in kind</p> <p>21 via athletic scholarships that constitute less than</p> <p>22 22 percent of total athletic department revenues.</p> <p>23 Clearly the monopsonistic practices of the NCAA are</p> <p>24 effective in restricting the compensation of</p> <p>25 athletes."</p>	<p style="text-align: right;">117</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 clearly based on what he's presented in the abstract</p> <p>3 that he can draw that conclusion, and I don't think</p> <p>4 that's valid.</p> <p>5 Q. Okay. But based only on the abstract?</p> <p>6 A. Agreed.</p> <p>7 Q. Okay.</p> <p>8 Let's look back at Exhibit 1. Can you find</p> <p>9 that? So Exhibit 1 you'll recall is the textbook on</p> <p>10 microeconomics, Robert S. Pindyck and Daniel</p> <p>11 Rubinfeld, Microeconomics. The particular version</p> <p>12 is 9th edition, 200- -- it's labeled 2018, but that</p> <p>13 seems premature.</p> <p>14 If you look at pages 540 and 541, there's</p> <p>15 an example 14.4, and the heading, do you see where</p> <p>16 it says "Monopsony Power in the Market for Baseball</p> <p>17 Players"?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Okay. And then if you turn to page 541,</p> <p>20 the paragraph that spills over from the bottom of</p> <p>21 this insert left column to the right column, it</p> <p>22 begins "The result was an interesting experiment in</p> <p>23 labor market economics. Between 1975 and 1980 the</p> <p>24 market for baseball players adjusted to a new post</p> <p>25 reserve clause equilibrium. Before 1975</p>

30 (Pages 114 to 117)

PAUL OYER. - HIGHLY CONFIDENTIAL

<p style="text-align: right;">118</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 expenditures on player's contracts made up</p> <p>3 approximately 25 percent of all team expenditures.</p> <p>4 By 1980 those expenditures had increased to 40</p> <p>5 percent."</p> <p>6 In those last two sentences where the</p> <p>7 authors are describing compensation to players as a</p> <p>8 percentage of all team expenditures, would you</p> <p>9 characterize that as a wage-share analysis?</p> <p>10 A. It's interesting you chose those two</p> <p>11 sentences instead of anything else in this box; but</p> <p>12 yes, I would characterize those that way.</p> <p>13 Q. You would characterize those that way.</p> <p>14 Okay. And where in your report do you discuss this</p> <p>15 portion of the Pindyck and Rubinfeld book?</p> <p>16 A. I don't discuss the Pindyck and Rubinfeld</p> <p>17 book. I think it's fair to note for the record that</p> <p>18 you've shown me a 2018 book and asked me where I</p> <p>19 reference it. It would be hard for me to reference</p> <p>20 a book that's not yet available.</p> <p>21 Q. It is available, actually, to be clear.</p> <p>22 A. We don't know that that was true when I</p> <p>23 wrote my report.</p> <p>24 Q. If that insert was in the previous edition,</p> <p>25 then do you think it would have been possible for</p>	<p style="text-align: right;">120</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 page -- on paragraph 22.</p> <p>3 A. Okay.</p> <p>4 Q. So is it correct that you discuss his book,</p> <p>5 the one I identified, Monopsony In Motion, and</p> <p>6 suggest it does not contain analyses using wage</p> <p>7 share?</p> <p>8 A. That's right.</p> <p>9 Q. Are you suggesting that Dr. Manning</p> <p>10 explicitly rejects wage share concluding it is an</p> <p>11 inappropriate basis for analyzing compensation in</p> <p>12 labor markets?</p> <p>13 A. I have no recollection of him doing that.</p> <p>14 Q. Okay. And there's nowhere in your report</p> <p>15 that you're aware of where you cite him explicitly</p> <p>16 rejecting wage share for analyzing compensation in</p> <p>17 labor markets?</p> <p>18 A. That's right.</p> <p>19 Q. Okay. Are you aware that there are</p> <p>20 numerous other books on monopsony power including in</p> <p>21 labor markets?</p> <p>22 A. I -- there must --</p> <p>23 MR. WIDNELL: Objection, form.</p> <p>24 BY THE WITNESS:</p> <p>25 A. Am I aware that there are other books on</p>
<p style="text-align: right;">119</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 you to have reviewed it in drafting your report?</p> <p>3 A. Then I can't -- anyway, no, because I</p> <p>4 didn't review that book, to be honest.</p> <p>5 Q. Fair enough.</p> <p>6 Turning back to Exhibit 2, this is your</p> <p>7 report. Do you have that before you?</p> <p>8 A. I do.</p> <p>9 Q. Okay. In your report you discuss a</p> <p>10 particular book on monopsony power in the labor</p> <p>11 markets, Alan Manning, Monopsony In Motion --</p> <p>12 THE REPORTER: I'm sorry.</p> <p>13 MR. DAVIS: I'm sorry. Yes. Should I</p> <p>14 start from the beginning of that sentence?</p> <p>15 THE REPORTER: No. After labor markets.</p> <p>16 BY MR. DAVIS:</p> <p>17 Q. Alan Manning, M-A-N-N-I-N-G, Alan is</p> <p>18 A-L-A-N, Monopsony In Motion, and suggests it does</p> <p>19 not contain analysis -- analyses using wage share;</p> <p>20 is that correct?</p> <p>21 A. Where are you pointing me to?</p> <p>22 Q. Pages --</p> <p>23 A. It's consistent --</p> <p>24 Q. -- 6 and 7 of your report. I think you</p> <p>25 begin the discussion of Professor Manning's work on</p>	<p style="text-align: right;">121</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 monopsony in labor markets?</p> <p>3 Q. Yes.</p> <p>4 A. There are books on everything.</p> <p>5 Q. Okay.</p> <p>6 A. So I -- I can't say that I'm aware of other</p> <p>7 books on monopsony in labor markets. I can tell you</p> <p>8 that I certainly would expect there are many other</p> <p>9 books on monopsony in labor markets.</p> <p>10 Q. Okay. Well, is there some reason you focus</p> <p>11 on Dr. Manning's books -- book as opposed to the</p> <p>12 others?</p> <p>13 A. Yes. It's a well-known, well-cited, highly</p> <p>14 regarded book among labor economists.</p> <p>15 Q. Is it possible that there are other books</p> <p>16 on monopsony power in labor markets that are</p> <p>17 similarly well known and similarly broadly cited?</p> <p>18 A. Is it possible? I guess. I mean,</p> <p>19 anything's possible, right? I have not done a</p> <p>20 thorough search of all books on monopsony in the</p> <p>21 labor market.</p> <p>22 Q. As a labor economist would you likely be</p> <p>23 familiar with this particular literature?</p> <p>24 A. Sure. I mean, yes and no. I'm familiar</p> <p>25 with this literature. Books are a different story.</p>

31 (Pages 118 to 121)

PAUL OYER. - HIGHLY CONFIDENTIAL

<p style="text-align: right;">122</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 This was written for -- the main goal of this book</p> <p>3 is not really to sell to other academic economists.</p> <p>4 It's to sell to students and lay people interested</p> <p>5 in the topic.</p> <p>6 Q. Well, so then would economists find</p> <p>7 Professor Manning's book and his opinions</p> <p>8 authoritative?</p> <p>9 A. Sure.</p> <p>10 Q. Oh, they would?</p> <p>11 A. Yeah.</p> <p>12 Q. Do you think this is a particularly</p> <p>13 authoritative source on labor markets and monopsony</p> <p>14 power?</p> <p>15 MR. WIDNELL: Objection, form.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Alan Manning is a recognized expert and</p> <p>18 leader in the thinking of monopsony -- analysis of</p> <p>19 monopsony in labor markets. So his book and his</p> <p>20 handbook chapter are authoritative sources among</p> <p>21 labor economists.</p> <p>22 Q. So it's more that you would say Professor</p> <p>23 Manning is particularly authoritative, or I guess</p> <p>24 you could say both, he and his book?</p> <p>25 MR. WIDNELL: Objection, form.</p>	<p style="text-align: right;">124</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 effects of monopsony power?</p> <p>3 A. I don't think I cite to that.</p> <p>4 Q. Where in your report do you cite to any</p> <p>5 publication that says it is inappropriate for a</p> <p>6 labor economist to use wage share in determining the</p> <p>7 marginal product of labor of a worker?</p> <p>8 A. I don't. There would be no reason to say</p> <p>9 that.</p> <p>10 Q. Okay. Where in your report do you cite to</p> <p>11 any publications that use wage level as a measure of</p> <p>12 the marginal product of labor of professional</p> <p>13 athletes?</p> <p>14 A. That use wage level as a measure of -- so</p> <p>15 can you -- I'm sorry. I need that one again.</p> <p>16 Q. Sure. Where in your report do you cite to</p> <p>17 any publications that use wage level as a measure of</p> <p>18 the marginal product of labor of professional</p> <p>19 athletes?</p> <p>20 A. I have to think about that one. I don't</p> <p>21 think I do.</p> <p>22 Q. Where in your report do you cite to any</p> <p>23 publications that measure the marginal product of</p> <p>24 labor of professional athletes at all?</p> <p>25 A. I don't that I can recall.</p>
<p style="text-align: right;">123</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 BY THE WITNESS:</p> <p>3 A. So is there a question?</p> <p>4 Q. Yeah. Are you saying that both Professor</p> <p>5 Manning and his book are particularly authoritative?</p> <p>6 A. Yes.</p> <p>7 Q. Where in your report do you cite to any</p> <p>8 publications that say it is inappropriate for a</p> <p>9 labor economist to use wage share in conducting</p> <p>10 microeconomic analysis?</p> <p>11 A. I don't remember citing to that.</p> <p>12 Q. Where in your report do you cite to any</p> <p>13 publications that say it is inappropriate for a</p> <p>14 labor economist to use wage share in assessing the</p> <p>15 effects of monopsony power?</p> <p>16 A. Is that different from the last question?</p> <p>17 Q. The last question was about conducting</p> <p>18 microeconomic analysis, and this second question was</p> <p>19 more specifically addressing assessing the effects</p> <p>20 of monopsony power. Should I read it back to you</p> <p>21 just to be clear?</p> <p>22 A. That would be great.</p> <p>23 Q. Where in your report do you cite to any</p> <p>24 publications that say it is inappropriate for a</p> <p>25 labor economist to use wage share in assessing the</p>	<p style="text-align: right;">125</p> <p>1 PAUL OYER - HIGHLY CONFIDENTIAL</p> <p>2 Q. Where in your report do you cite to any</p> <p>3 publications that assess the effects of monopsony</p> <p>4 power on the compensation of professional athletes?</p> <p>5 A. Sorry. Can you read that back?</p> <p>6 Q. Where in your report do you cite to any</p> <p>7 publications that assess the effects of monopsony</p> <p>8 power on the compensation of professional athletes?</p> <p>9 A. And we're not counting the other expert</p> <p>10 reports as relevant publications on which I comment?</p> <p>11 Q. You didn't cite to them or rely on them,</p> <p>12 you said.</p> <p>13 A. The Singer report and the --</p> <p>14 Q. Oh, the Singer -- oh, I misunderstood.</p> <p>15 A. -- and the Zimbalist report?</p> <p>16 Q. Oh, so the Singer report and the Zimbalist</p> <p>17 report.</p> <p>18 A. We're not counting those as whatever --</p> <p>19 however -- whatever you termed it. Studies?</p> <p>20 Q. I had said publications.</p> <p>21 A. Okay. But other than those, no.</p> <p>22 Q. We were talking over each over and, again,</p> <p>23 I'm as much at fault at least as you.</p> <p>24 A. Sorry.</p> <p>25 Q. Just to clarify, you did not cite to any</p>

32 (Pages 122 to 125)